



SMALL BUSINESS ADMINISTRATION

13 CFR Part 120

RIN 3245-AH04

SBA Supervised Lenders Application Process

AGENCY: U.S. Small Business Administration.

ACTION: Final rule.

SUMMARY: The U.S. Small Business Administration (SBA or Agency) is amending the regulations applicable to Small Business Lending Companies (SBLCs) and state-regulated lenders (Non-Federally Regulated Lenders (NFRLs) (collectively referred to as SBA Supervised Lenders). The key amendments to the regulations include a new application and review process for SBA Supervised Lenders, including for transactions involving a change of ownership or control. Other amendments to the regulations include updating the minimum capital maintenance requirements, clarifying the factors SBA will consider in its evaluation of an SBA Supervised Lender application and limiting the 7(a) lending area for NFRLs.

DATES: This rule is effective January 4, 2021.

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SUPPLEMENTARY INFORMATION:

I. Background Information

The 7(a) Loan Program is a business loan program authorized by section 7(a) of the Small Business Act (15 U.S.C. 636(a)) and is governed primarily by the regulations in part 120 of title 13 of the Code of Federal Regulations (CFR). The core mission of the

7(a) Loan Program is to provide SBA-guaranteed financial assistance to small businesses that lack access to capital on reasonable terms and conditions to support our nation's economy.

Most Lenders participating in the 7(a) Loan Program are depository institutions that have a primary Federal Financial Institution Regulator (as defined in 13 CFR 120.10) that oversees the Lender's lending activities. SBA has statutory authority under section 7(a)(17) of the Small Business Act to authorize non-federally regulated entities to make 7(a) loans, including entities that have state regulators. Under this authority, SBA has authorized SBA Supervised Lenders to make loans in the 7(a) Loan Program. SBA Supervised Lenders are defined in 13 CFR 120.10 to include SBLCs and NFRLs, and are subject to regulation, oversight, and enforcement by SBA.

SBLCs are non-depository lending institutions that are authorized only to make loans pursuant to section 7(a) of the Small Business Act and loans to Intermediaries in SBA's Microloan program. SBLCs are regulated, supervised, and examined solely by SBA, except for the subset of SBLCs defined as Other Regulated SBLCs in 13 CFR 120.10. SBA imposed a moratorium on issuing additional SBA lending authorities (referred to as SBLC Licenses) to SBLCs in 1982. Currently, there are fourteen (14) SBLCs with the authority to make 7(a) loans up to the maximum loan amount allowed under the Small Business Act.¹ An entity may purchase one of the fourteen (14) SBLC Licenses from an existing SBLC with SBA's prior written approval.

¹ SBA waived certain regulations for the purpose of permitting mission-oriented lenders to participate in SBA's Community Advantage Pilot Program (referred to as CA Lenders), a pilot program within the 7(a) Loan Program. Each CA Lender is identified as either an SBLC or NFRL, depending on whether the lender is subject to regulation by a state. CA Lenders are limited to making loans in the CA Pilot Program, which generally requires a CA Lender to make loans to underserved markets (e.g., low-to-moderate income communities, rural areas, opportunity zones, veteran-owned businesses) and in an amount not to exceed \$250,000. The CA Pilot Program is governed by all regulations applicable to the 7(a) Loan Program generally and to SBA Supervised Lenders specifically unless waived or modified in the *Federal Register* Notices published in connection with the CA Pilot Program. As indicated in the proposed rule, the revisions in this final rule do not apply to the CA Pilot Program. For more information about the CA Pilot

NFRLs are business concerns that are subject to regulation, supervision and oversight by a state regulator that must be satisfactory to SBA. By definition, an NFRL's lending activities are not regulated by a Federal Financial Institution Regulator. NFRLs are typically organized as state licensed Business and Industrial Development Companies (BIDCOs) and may include other types of state-regulated lending institutions, such as non-profit corporations or financial institutions without Federal deposit insurance or share insurance protection.²

To become an SBA Supervised Lender, an applicant must be qualified as determined by SBA in its sole discretion. An entity interested in becoming an SBA Supervised Lender must submit an application to SBA containing the information specified in SBA's Standard Operating Procedures 50 10, Lender and Development Company Loan Programs, as amended from time to time (SOP 50 10).³

On January 13, 2020, SBA published a proposed rule with a request for comments in the *Federal Register* to amend the regulations related to the SBA Supervised Lender application and review process and to mitigate certain risks inherent in their participation in the 7(a) Loan Program. 85 FR 1783 (January 13, 2020). The proposed changes were designed to: improve efficiencies related to the SBA Supervised Lender application and review process, including for a change of ownership or control transaction (as defined in § 120.468); incorporate into the regulations the factors SBA will consider in its evaluation of an application; and mitigate the increased risk associated with the lending

Program please refer to the CA Participant Guide, Version 6.0 (June 15, 2020), available at <https://www.sba.gov/document/support--community-advantage-participant-guide>.

² This final rule does not apply to NFRLs authorized to make Paycheck Protection Program (PPP) loans under SBA Form 3507. For more information about PPP please refer to the information available on SBA's website at <https://www.sba.gov/funding-programs/loans/coronavirus-relief-options/paycheck-protection-program>.

³ The current version of the SOP is 50 10 6, effective October 1, 2020. The application requirements can be found in this SOP in Part 1, Section A, Chapter 1, Paragraph A.2 with respect to NFRLs and Part 1, Section A, Chapter 2, Paragraph B with respect to SBLCs. The SOP is available at <https://www.sba.gov/document/sop-50-10-lender-development-company-loan-programs-0>.

operations of SBA Supervised Lenders by updating their minimum capital maintenance requirements and establishing a 7(a) lending area for NFRLs.

II. Summary of Comments

SBA received 19 comments on the proposed rule. Seven comments were submitted by or on behalf of SBLCs. Three comments were submitted by or on behalf of NFRLs. Three comments were submitted by or on behalf of state regulators. SBA also received comments from two trade associations, two law firms, and two individuals.

The comments were generally supportive of the proposed application and review process with some suggested changes to shorten the waiting period for entities seeking to reapply to become an SBA Supervised Lender. Commenters generally agreed with SBA's proposed definition of qualified full-time professional management with minor changes. The commenters were also generally in favor of the changes to the minimum capital maintenance requirements with some proposed changes. A majority of the commenters were opposed to SBA limiting the 7(a) lending area for NFRLs to the state in which their primary state regulator is located. Commenters also requested some technical changes to the proposed regulation related to SBA's evaluation of applications and the requirements for change of ownership or control transactions. Finally, there were several responses to SBA's request for comments on whether SBA should modify the contribution that servicing rights assets may have on an SBA Supervised Lender's capital maintenance requirement.

SBA appreciates the comments received and has incorporated many of the suggested changes into the final rule. SBA has addressed the comments to the proposed regulatory changes within the section-by-section analysis below.

III. Section-by-Section Analysis of Comments and Changes

A. *SBA Supervised Lenders*

1. Section 120.460 What are SBA's additional requirements for SBA Supervised Lenders?

SBA proposed to add two new paragraphs to § 120.460. Proposed paragraph (c) required all SBA Supervised Lenders to employ qualified full-time professional management, as is currently required for SBLCs. This proposed regulation also clarified the meaning of full-time professional management to include, at a minimum, the employment of a chief executive officer or equivalent to manage daily operations, a chief credit/risk officer, and at least one other full-time employee qualified by training and experience to carry out the SBA Supervised Lender's business plan. In addition, proposed paragraph (c) included a requirement that an SBA Supervised Lender must sustain a sufficient level of 7(a) lending activity in its area of operation.

Overall commenters supported proposed § 120.460(c). A few commenters suggested that SBA should allow SBA Supervised Lenders to fulfill the full-time professional management requirement by using shared employees from affiliate organizations. One commenter suggested SBA should eliminate the requirement for a third full-time employee.

SBA recognizes that SBA Supervised Lenders may have different staffing levels depending on the size of their 7(a) loan portfolios. However, SBA maintains its policy position that SBA Supervised Lenders must have a minimum level of internal oversight to independently manage their 7(a) lending operations. SBA considered the comments received and has revised the rule to permit SBA Supervised Lenders to meet the qualified full-time professional management requirement by having two full-time senior officers (i.e., CEO and CCO/CRO), and one part-time employee (which may be a shared employee of the lender's affiliates). Existing SBA Supervised Lenders will not be required to comply with this regulatory definition of qualified full-time professional

management unless, after the effective date of this final rule, the SBA Supervised Lender makes or acquires any 7(a) loans or engages in a transaction that constitutes a change of ownership or control.

SBA received six comments in support of the requirement in paragraph (c) for each SBA Supervised Lender to maintain a sufficient level of lending activity in its area of operation. Most commenters requested that SBA clarify in the final rule the meaning of a “sufficient” level of lending activity. SBA considered these comments and has determined that a sufficient level of lending activity for SBA Supervised Lenders means obtaining at least four 7(a) loan approvals during two consecutive fiscal years. This is modeled on the minimum level of loan activity that SBA currently requires for Certified Development Companies in the 504 loan program. See 13 CFR 120.828. Existing SBA Supervised Lenders will not be required to comply with the 7(a) lending activity requirement unless, after the effective date of this final rule, the SBA Supervised Lender makes or acquires any 7(a) loans or engages in a transaction that constitutes a change of ownership or control.

Second, proposed new paragraph (d) limited an NFRL’s 7(a) lending area to the state in which its primary state regulator is located. Overall, commenters were opposed to this part of the proposed rule. Some commenters argued that a limitation on the 7(a) lending area for NFRLs could have an impact on their business plans. Five commenters suggested that SBA should allow NFRLs previously engaged in nationwide 7(a) lending to continue such lending activities. One commenter supported the 7(a) lending area restriction for NFRLs, but suggested that SBA provide a 1-year transition period to allow NFRLs to adjust their future 7(a) lending activities.

As stated in the proposed rule, approximately 90 percent of all 7(a) loan approvals obtained by NFRLs during the last 3 fiscal years were for 7(a) loans to be made in the

state where the NFRL's primary state regulator was located. Additionally, the final rule does not limit or restrict in any way an NFRL's ability to make other types of non-SBA loans to borrowers on a nationwide basis. While SBA understands that some state regulators may not object to nationwide 7(a) lending for NFRLs, state regulators do not bear the same financial risk that SBA assumes as the guarantor of 7(a) loans.⁴ Moreover, while state regulators may generally oversee NFRLs within their borders for safety and soundness, SBA bears the responsibility of ensuring participating lenders comply with SBA Loan Program Requirements (as defined in 13 CFR 120.10). When SBA placed a moratorium on approving additional SBLCs in 1982, it did so to reduce the administrative resources needed to prudently regulate and oversee non-depository lenders with a nationwide 7(a) lending platform. SBA does not have the administrative resources needed to oversee NFRLs with a nationwide 7(a) lending platform in addition to the 14 SBLCs it currently regulates. In addition, proposed § 120.460(d) is consistent with state statutes placing geographic limits on lending activity overseen by state regulators, as well as a general understanding that NFRLs are expected to focus on economic development in their state and local communities.

SBA carefully considered the comments received on proposed § 120.460(d) and does not agree with the commenters' objections. In order to manage the Agency's limited administrative resources and the increased risk to SBA associated with NFRLs participating in the 7(a) Loan Program, the final rule establishes a 7(a) lending area for NFRLs limited to the state in which their primary state regulator is located. SBA will provide an exception such that an NFRL's lending area may include a local trade area that is contiguous to such state (e.g., a city or metropolitan statistical area that is bisected

⁴ SBA's guaranty on regular 7(a) loans ranges from 50% to 90% of the loan amount. Under the PPP, SBA's guaranty is 100% of the loan amount.

by a state line) with SBA's prior written approval. SBA also is adopting a commenter's suggestion that NFRLs that are currently engaged in 7(a) lending outside of the state in which their primary regulator is located should not be subject to the 7(a) lending area limitation until 1 year after the effective date of the final rule. SBA will apply this rule immediately, however, to all new NFRLs and to any NFRL that engages in and/or is seeking approval of a change of ownership or control transaction. The 1-year grace period will allow the few NFRLs that may be affected by this rule to adjust their future 7(a) lending activities. SBA encourages existing or prospective NFRLs interested in making 7(a) loans on a nationwide basis to acquire one of the fourteen SBLC licenses that become available from time to time.

For further discussion of the impact of this provision, see the final regulatory flexibility analysis (FRFA) below.

2. Section 120.462 What are SBA's additional requirements on capital maintenance for SBA Supervised Lenders?

SBA proposed to amend the regulations to require NFRLs to maintain a baseline minimum amount of capital necessary for participation in the 7(a) Loan Program. The proposed rule established a minimum amount of capital equal to the higher of (1) the minimum amount of capital required by the NFRL's state regulator, or (2) \$2,500,000. Commenters were generally supportive of the proposal. A few commenters indicated that the \$2.5 million capital amount was too high, and SBA should instead allow the minimum capital requirement to be based on the size of the NFRL's loan portfolio. Other commenters suggested that the \$2.5 million capital amount was too low and encouraged SBA to raise the minimum capital requirement for NFRLs to be at the same level as SBLCs (i.e., \$5 million).

SBA must ensure that NFRLs have a minimum level of capital necessary to manage the credit risk associated with their 7(a) lending operations. SBA disagrees with the comments suggesting that the amount should be increased or decreased and is moving forward with the rule as proposed. As SBA proposed, NFRLs will have 3 years after the effective date of this final rule to reach the new minimum capital amount. In addition, an NFRL that does not meet the new minimum capital requirement by the end of the 3-year period may remain in the 7(a) Loan Program but will not be permitted to make or acquire 7(a) loans after such date until it satisfies the minimum capital requirement. The minimum capital requirement will also apply immediately to new NFRLs and in the event of a change of ownership or control of an NFRL occurring and/or approved after the effective date of this final rule.

3. Section 120.466 SBA Supervised Lender application

SBA proposed to add a new § 120.466 to codify a new application and review process for entities seeking to become an SBA Supervised Lender. SBA proposed to evaluate applications through an initial review and, if warranted, a final review.

The initial review requires an SBA Supervised Lender applicant to submit a written plan (known as a Lender Assessment Plan (LAP)). The LAP contains key information that would enable SBA to reach a preliminary assessment about the qualifications of an applicant expeditiously. An LAP review includes an initial assessment of the applicant's business plan, capitalization, and professional management team. SBA could also require an interview with the Office of Capital Access. If SBA were to notify an applicant that it may not proceed to the final review phase, the proposed rule provided that the applicant must wait nine months from the date of such notification before reapplying by submitting a new LAP.

Overall commenters were supportive of the proposed rule. SBA received six comments suggesting the 9-month waiting period was too long and should be shortened to 3 months. SBA considered these comments and has agreed to shorten the waiting period from 9 months to 6 months to address the commenters' concerns. SBA believes that 3 months is too short a period to allow an applicant to make meaningful improvements in its circumstances.

The final review, as proposed under § 120.466(b), requires an SBA Supervised Lender applicant to submit a complete application to SBA. The complete application updates the information disclosed in the LAP and provides SBA with additional information for review, such as the applicant's organizational documents, operational plan, credit policies, internal control policies, loan risk rating system, capital adequacy plan, proposed credit facilities (if any), organizational chart, audited financial statements, bank statements, legal opinions and any other necessary documentation as further described in official SBA policies and procedures.⁵ After completion of the final review, SBA issues a final decision to approve or deny the application. If an SBA Supervised Lender's application is denied, the proposed rule required an applicant to wait 18 months before it may submit a new LAP and restart the application process. The Agency received a number of comments requesting that SBA shorten this 18-month time period. SBA considered these comments and has agreed to shorten the time period from 18 months to 12 months. SBA believes a 1 year waiting period will allow the applicant to address material deficiencies and for meaningful and sustained improvement in its application.

⁵ The information required to be submitted in a complete application is not set forth in SBA's regulation but will continue to be in SBA's official policies and procedures. See SOP 50 10.

Lastly, under proposed § 120.466(c), an entity seeking to become an NFRL is required to have at least one year of current operating and relevant commercial lending experience (by the entity itself) before the entity may submit an application to become an SBA Supervised Lender. SBA did not receive comments on this portion of the proposed rule and will include paragraph (c) in the final rule, with the clarification that it is the applicant that must have the requisite experience.

4. Section 120.467 Evaluation of SBA Supervised Lender applicants

SBA proposed to add a new § 120.467 to incorporate into the regulations the factors SBA will consider in evaluating an SBA Supervised Lender applicant. SBA's evaluation will include a review of, among other things, the applicant's business plan, capitalization, operational plan, organizational structure, management qualifications, the historical performance of the loans originated by the applicant or attributable to its management team, the applicant's financial projections and liquidity, and prior history or involvement of the applicant or its management team (including key employees) with any SBA guaranteed lending program or any other Federal or state lending program. SBA also reviews the results of background investigations (e.g., through SBA Form 1081) and other information obtained through due diligence and reference checks. Under the proposed rule SBA may also prohibit individuals or entities from participating as an officer, director, manager, owner or key employee of an SBA Supervised Lender applicant.

Commenters were generally in support of the proposed rule. SBA received four comments to proposed paragraph (b)(1) suggesting that it be revised to reflect that the individuals or entities that SBA may prohibit from serving as an officer, director, manager, owner or key employee of an SBA Supervised Lender are those that have

“materially” failed to comply with SBA Loan Program Requirements. SBA has agreed to revise § 120.467(b)(1) by adding “materially” to this paragraph in the final rule.

5. Section 120.468 Change of ownership or control requirements for SBA Supervised Lenders

SBA proposed to move the regulation applicable to a change of ownership or control of an SBLC (§ 120.475) to a new § 120.468 with certain modifications. The purpose of this change is to incorporate into the regulations the Agency’s current policy requirement and practice that all SBA Supervised Lenders, including NFRLs, must obtain SBA written approval prior to any change of ownership or control.

Section 120.468(a) in the proposed rule clarified that SBA Supervised Lenders must receive SBA prior written approval before entering into a definitive agreement regarding a change of ownership or control. SBA received approximately 11 comments on this proposed rule. The commenters were opposed to the requirement to obtain SBA prior written approval before entering into a definitive agreement for a change of ownership or control. Most commenters requested that SBA either strike this provision from the rule or require a change of ownership or control to be “conditioned” upon receipt of SBA approval.

SBA disagrees with these comments. SBA is seeking to eliminate the time and expense associated with SBA Supervised Lenders entering into agreements for a change of ownership or control only to have SBA deny their requests months later after conducting a thorough review of the applications. Allowing SBA Supervised Lenders to enter into an agreement upfront (without prior SBA approval) would cause unnecessary time and expense to be expended by the parties in some cases and could unfairly raise expectations. The final rule retains the requirement that any SBA Supervised Lenders seeking to continue in the 7(a) Loan Program must obtain SBA’s prior written approval

before entering into an agreement for a change of ownership or control. To avoid confusion as to the meaning of a “definitive” agreement, SBA has removed the term and is clarifying that the limitation applies even if such agreement is conditioned on SBA approval. However, an SBA Supervised Lender may enter into a non-binding letter of intent regarding a prospective change of ownership or control, provided that such letter is reported to SBA within 30 calendar days. SBA removed the cross reference to § 120.464(a)(5) in the final rule in response to comments received.

Section 120.468(b) of the proposed rule clarified that if the approval of any state or Federal authority is required for an SBA Supervised Lender’s change of ownership or control, such approval is required in addition to SBA’s prior written approval. SBA did not receive any comments on this part of the proposed rule and will adopt the text in the final rule as proposed.

Section 120.468(c) of the proposed rule incorporated SBA’s current policy that a new application must be submitted to SBA in connection with a change of ownership or control of an SBA Supervised Lender. SBA did not receive any comments on this part of the proposed rule and will adopt the text in the final rule as proposed.

Section 120.468(d) of the proposed rule provided that SBA Supervised Lenders would have an opportunity to voluntarily surrender their SBA lending authority (i.e., the SBLC License or the NFRL lending authority) and withdraw from the 7(a) Loan Program with SBA’s prior written approval. As proposed, a voluntary surrender requires an SBA Supervised Lender to (i) transfer its entire loan portfolio to one or more Lenders acceptable to SBA, and (ii) enter into a withdrawal agreement. One commenter suggested that if a transferee for an SBA Supervised Lender’s 7(a) loan portfolio could not be found, the final rule should be clarified so that SBA may take over the servicing of the SBA Supervised Lender’s 7(a) loan portfolio. SBA agrees with this comment and has

revised the final rule such that SBA may, in its sole discretion, elect to take over the servicing of an SBA Supervised Lender's 7(a) loan portfolio upon the voluntary surrender of its SBA lending authority. If SBA elects to take over servicing, the SBA Lender must assign the 7(a) loan documents to SBA and provide any needed assistance to allow SBA to take over servicing. SBA may use contractors to perform these actions. See 13 CFR 120.535(d).

6. Section 120.471 What are the minimum capital requirements for SBLCs?

SBA proposed to amend § 120.471(a) to increase the minimum capital requirement for SBLCs. As stated in the proposed rule, the minimum capital amount for SBLCs has not been updated since 1996. SBA believes the current minimum capital (of at least \$1,000,000) is insufficient to assure an SBLC's continued financial viability or to provide for any necessary growth. As stated in the proposed rule, the maximum 7(a) loan amount has increased from \$1,000,000 in 1996 to \$5,000,000 as of the date of the proposed rule.⁶ As a result, SBA has determined that a corresponding change to increase the minimum capital requirements for SBLCs is necessary at this time.

Under the proposed rule, SBLCs must maintain a minimum amount of capital equal to unencumbered paid-in capital and paid-in surplus of at least \$5 million, or 10 percent of the aggregate of the SBLC's share of all outstanding loans, whichever is greater. Most of the 14 SBLCs have capital in excess of the minimum capital proposed under § 120.471(a). SBA also included a provision in the proposed rule providing SBLCs with 3 years after the effective date of the final rule to reach the new minimum capital amount. However, the proposed minimum capital amount would apply

⁶ In addition, the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) (Pub. L. 116-136), permits participating lenders to make section 7(a) loans up to a maximum amount of \$10 million under the PPP.

immediately in the event of a change of ownership or control of an SBLC occurring and/or approved after the effective date of this final rule.

Five commenters supported the proposed rule and two commenters were opposed. Commenters also encouraged SBA to modify the definition of regulatory capital so that SBA Supervised Lenders would not need to maintain capital against the full amount of the unguaranteed portion of 7(a) loans sold into securitizations. Three commenters also expressed some concerns about the proposed increase in capital for non-profit SBLCs and suggested that these entities should be permitted to use “restricted” capital toward their minimum capital requirement.

SBA considered the comments and is moving forward with the proposed rule as drafted. SBA disagrees that SBLCs should only be required to maintain capital against the risk retention portion of their 7(a) loan securitizations as opposed to the full amount of the unguaranteed portion of 7(a) loans sold into securitizations. SBA requires non-depository institutions (including SBA Supervised Lenders) that engage in securitization transactions to maintain capital in accordance with § 120.425(a). This regulation applies a capital charge against all assets of the securitizer including the balance outstanding on the unguaranteed portion of the securitizer’s 7(a) loans, as well as including those unguaranteed interests in any securitization pool. SBA did not propose any revisions to § 120.425(a) in the proposed rule.

SBA also does not agree with the suggestion that non-profit SBLCs should be permitted to include “restricted” capital in their minimum capital calculation. An SBLC’s capital must be “unencumbered” and available to absorb potential losses from its lending activities, including those associated with its entire 7(a) loan portfolio. Restricted capital does not meet this requirement. SBA will not permit non-profit SBLCs to include restricted capital towards their minimum capital calculation.

Finally, SBA will continue to study whether changes to the definition of capital under § 120.471(b) should be modified to account for the valuation of servicing rights assets. Most of the comments received suggested that SBA should allow SBLCs to receive full credit for the value of their servicing rights towards their minimum capital requirement. If SBA determines there is a need for further changes, SBA will promulgate regulations or provide additional guidance on this issue.

B. *Technical Changes*

1. Section 120.410 Requirements for all participating Lenders

SBA proposed a conforming technical change to § 120.410(a)(1) to reflect the new minimum capital requirements for SBA Supervised Lenders. SBA did not receive any comments on this proposed technical change and incorporated the proposed text into the final rule.

2. Section 120.470 What are SBA’s additional requirements for SBLCs?

SBA proposed a conforming technical change to remove § 120.470(g) “Management” and redesignate paragraph (h) as paragraph (g). No comments were received, and SBA is adopting the change in this final rule. The management requirement for SBLCs is addressed in new § 120.460(c).

3. Section 120.475 Change of ownership or control

SBA proposed a conforming technical change to remove and reserve § 120.475. No comments were received, and SBA is adopting the change in this final rule. The text of § 120.475 is incorporated into § 120.468.

Compliance with Executive Orders 12866, 13563, 13771, 12988, and 13132, the Paperwork Reduction Act (44 U.S.C., Ch. 35), and the Regulatory Flexibility Act (5 U.S.C. 601–612)

Executive Order 12866

This rule finalizes a proposed rule that the Office of Management and Budget (OMB) determined was not a “significant” regulatory action for the purposes of Executive Order 12866. OMB did not change the non-significant designation for this final rule, and therefore, SBA has not prepared a Regulatory Impact Analysis. This is not a major rule under the Congressional Review Act, 5 U.S.C. 801 *et seq.*

Executive Order 13563

This executive order supplements and reaffirms the principles and requirements in Executive Order 12866, including the requirement to provide the public with an opportunity to participate in the regulatory process. SBA Supervised Lenders have been involved in the 7(a) Loan Program for over 35 years. Over the years, the Agency has received feedback from SBA Supervised Lender applicants and program participants, including valuable insight and suggestions for improvements to the application and review process. This feedback from SBA Supervised Lenders, together with the comments in response to the proposed rule, has shaped this final rule.

Executive Order 13771

This final rule is not subject to Executive Order 13771 regulatory action because the rule is not significant under Executive Order 12866.

Executive Order 12988

This action meets applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden. The action does not have retroactive or preemptive effect.

Executive Order 13132

SBA has determined that this final rule will not have substantial, direct effects on the States, on the relationship between the National Government and the States, or on the

distribution of power and responsibilities among the various levels of government. For the purposes of Executive Order 13132, SBA has determined that this rule has no federalism implications warranting preparation of a federalism assessment.

Paperwork Reduction Act, 44 U.S.C., Ch. 35

SBA has determined that this final rule imposes a new reporting requirement under the Paperwork Reduction Act (PRA). Specifically, the final rule requires SBA Supervised Lenders to submit a written Lender Assessment Plan (LAP) for SBA to conduct an initial review of the applicant. In addition, the final rule codifies a requirement for applicants to submit a complete application in order for SBA to determine whether the applicant has the qualifications necessary to participate in the 7(a) Loan Program as an SBA Supervised Lender. As discussed above, this requirement is currently described in SBA's official policies and procedures. In addition to these two requirements, the applicant will submit the same forms as other Lenders that apply to participate in the 7(a) Loan Program, including the SBA Form 1081, Statement of Personal History (OMB Control number 3245-0080).

The title, summary of the information collections, description of respondents, and an estimate of the related reporting burdens are discussed below. Additional information related to these requirements is included in the Regulatory Flexibility Act discussion in this rule. SBA did not receive comments on the new information collections in the proposed rule.

Title of Collection: SBA Supervised Lender Application and Review

OMB Control Number: New Collection

(a) Lender Assessment Plan.

The final rule requires organizations seeking to become an SBA Supervised Lender (or seeking SBA approval of a change of ownership or control) to submit a LAP to SBA.

The LAP includes the legal name and contact information of the applicant, a written business plan, current and projected financial statements and other important information about the applicant and its management team (including key employees).

Need and Purpose: The LAP is necessary for SBA to conduct an initial review of an applicant seeking to become an SBA Supervised Lender (or seeking SBA approval of a change of ownership or control). The LAP provides SBA with key information that would enable SBA to reach a preliminary assessment about the qualifications of an applicant more efficiently. This initial review phase will assist SBA in identifying incomplete applications and unqualified applicants much earlier in the application review process.

Description and Estimated Number of Respondents: Pursuant to proposed § 120.466(a), the information in the LAP will be collected from each organization seeking to become an SBA Supervised Lender (or seeking SBA approval of a change of ownership or control). SBA estimates that it will likely receive no more than four LAPs each year.

Total Estimated Response Time: It is estimated that each applicant would need approximately 35 hours to prepare and submit the LAP for an estimated total of 140 hours annually.

(b) SBA Supervised Lender Application.

If an applicant seeking to become an SBA Supervised Lender (or seeking SBA approval of a change of ownership or control) is authorized by SBA to proceed to the final review phase, the applicant will be required to submit a complete application.

Need and Purpose: The information submitted with this application is necessary for SBA to reach a final decision regarding whether the applicant has the qualifications necessary to participate in the 7(a) Loan Program. The complete application requires an SBA Supervised Lender applicant to provide additional detail about the information previously disclosed to SBA in the LAP and will include new information about the

applicant's proposed operation and lending activities as a participant in the 7(a) Loan Program. As stated above, these application requirements are not new since they are currently set out in SBA's official policies and procedures. Under those policies and procedures, an organization applying to become an SBA Supervised Lender (or seeking SBA approval of a change of ownership or control) is required to, among other things, submit documentation in support of its organizational structure, internal control policies, operational plan, proposed credit policies, loan risk rating system, proposed secondary market activities, capital adequacy plan, audited financial statements and other information (e.g., certifications and legal opinions) necessary for SBA to evaluate the qualifications of the applicant. See SOP 50 10. Although SBA estimates that the requirements will only apply to approximately four organizations each year, now that SBA is codifying the application requirements in this final rule, under the PRA the requirements are deemed to impact ten or more respondents; therefore, SBA has also requested OMB approval of this application in compliance with the PRA procedures.

Description and Estimated Number of Respondents: The information in the complete application will be collected from organizations that are seeking to become an SBA Supervised Lender and have successfully reached the final review phase. Based on current experience, SBA estimates that it will likely receive no more than four complete applications each year.

Total Estimated Response Time: It is estimated that each applicant would need approximately 50 hours to prepare and submit a complete application, for an estimated total of 200 hours annually.

Regulatory Flexibility Act, 5 U.S.C. 601-612

Under the Regulatory Flexibility Act (RFA), this final rule may have an impact on a substantial number of small entities that participate as SBA Supervised Lenders in the

7(a) Loan Program. Immediately below, SBA sets forth a final regulatory flexibility analysis (FRFA) examining the impact of the final rule in accordance with 5 U.S.C. 603. The FRFA addresses (1) the reasons, objectives and legal basis for this rule; (2) a description of the kind and number of small entities that may be affected; (3) the projected reporting, recordkeeping and other compliance requirements; (4) whether there are any Federal rules that may duplicate, overlap, or conflict with this rule; and (5) whether there are any significant alternatives to this rule.

1. What are the reasons, objectives and legal basis for the rule?

The rule is designed to improve efficiencies and enhance the application and review process for organizations seeking to participate in the 7(a) Loan Program as SBA Supervised Lenders. The objective is to provide a process for a more efficient and effective evaluation of the qualifications of applicants seeking to become SBA Supervised Lenders. The new application and review process will provide greater clarity and transparency to applicants and would expedite SBA's review, which may potentially reduce costs on applicants and on SBA's limited administrative resources.

The rule also raises the minimum capital requirement that SBA Supervised Lenders must maintain to assure their continued financial viability and to provide for any necessary growth. The minimum capital requirement for SBA Supervised Lenders has not been updated by SBA for more than 23 years. The Agency has determined that the regulations addressing minimum capital must be amended to correspond with the more than 500 percent increase in the maximum 7(a) loan amount that Congress has authorized by statute over the last twenty-three years.

The rule also limits the 7(a) lending area for NFRLs to the state in which their primary regulator is located, except that an NFRL may request SBA's prior written approval to make 7(a) loans in a local trade area that is contiguous to such state (e.g., a

city or metropolitan statistical area that is bisected by a state line). Most NFRLs participating in the 7(a) Loan Program already limit their lending activities to the state in which their primary state regulator is located. In recent years, some state regulators have permitted NFRLs to make loans outside of their state or even nationwide. The expansion of an NFRL's 7(a) lending area increases risk to SBA and the Agency does not have the additional administrative resources to adequately supervise, regulate and examine NFRLs that operate outside of their state. This part of the final rule is also consistent with the general understanding that state-regulated lenders (such as BIDCOs) are licensed under specific state laws to focus primarily on economic development in their respective state and local communities. Based on the comments received, SBA has agreed to provide existing NFRLs that SBA has approved for 7(a) lending outside of the state in which their primary regulator is located with an additional one-year grace period to allow them to adjust their future 7(a) lending activities.

SBA is authorized to supervise the safety and soundness of SBA Supervised Lenders and may regulate their 7(a) lending activities pursuant to section 23(a) of the Small Business Act. 15 U.S.C. 650(a), see also 15 U.S.C. 634(b)(7). SBA has the authority to promulgate rules, regulations and requirements for the 7(a) Loan Program. 15 U.S.C. 634(b)(6).

2. What are SBA's description and estimate of the number of small entities to which the rule will apply?

SBA Supervised Lenders affected by this rule comprise a unique class of 36 non-depository lenders that may only participate in the 7(a) Loan Program and make 7(a) loans if authorized by SBA. This final rule will be applicable to all SBA Supervised Lenders (other than lenders participating as CA Lenders in the CA Pilot Program and lenders authorized to make PPP loans under SBA Form 3507). SBA estimates that

approximately 88 percent of SBA Supervised Lenders are considered small entities based on NAICS sector code 52 (Finance and Insurance) and industry code 52298 (All Other Non-depository Credit Intermediation) and have annual receipts of less than \$38.5 million. This estimate of 32 small SBA Supervised Lenders is based in part on information contained in the quarterly condition reports and the annual reports that are required to be submitted to SBA by such lenders.

3. What are the projected reporting, recordkeeping, and other compliance requirements of the rule and an estimate of the classes of small entities which will be subject to the requirements?

The final rule imposes a new reporting requirement for organizations seeking to become an SBA Supervised Lender (or seeking SBA approval of a change of ownership or control). The final rule codifies an existing requirement that applicants submit a complete application for SBA to determine whether an organization has the qualifications necessary to participate in the 7(a) Loan Program as an SBA Supervised Lender.

The LAP includes key information about an organization that will allow SBA to reach a preliminary assessment about the qualifications of an applicant more efficiently. SBA estimates it will receive approximately four LAPs each year. SBA estimates that it will take approximately 35 hours for an organization to prepare an LAP at a cost of \$3,838 per LAP. Based on SBA's experience with similar data collections, we expect an organization that submits a LAP will need to employ the services of a financial manager and an administrative assistant when preparing an LAP for submission to SBA.⁷

⁷ The cost estimate for the LAP is based on hourly job position wages published by the U.S. Department of Labor's Bureau of Labor Statistics for 2019 and increased by 100% to account for benefits and overhead. The cost breakdown is as follows: Financial Manager (30 hours times an hourly rate of \$124.90) plus Administrative Assistant (5 hours times an hourly rate of \$36.24) equals \$3,838.

If an organization is authorized by SBA to proceed to the final review phase, a complete application must be submitted to SBA. As mentioned above, the application requirements for SBA Supervised Lenders are not new and are currently set forth in SBA's official policies and procedures. See SOP 50 10 6, Part 1, Section A, Chapter 1, Paragraph A.2 for NFRLs and Part 1, Section A, Chapter 2, Paragraph B for SBLCs. SBA estimates that it will receive approximately four complete applications each year. SBA estimates that it will take approximately 50 hours for an organization to prepare a complete application at a cost of \$5,207 per application. Based on SBA's experience with similar data collections, an organization applying to become an SBA Supervised Lender would typically employ the services of a financial manager, an accountant, an attorney and an administrative assistant when preparing a complete application for submission to SBA.⁸ SBA did not receive comments on whether the number of hours estimated to prepare a complete application is appropriate or on the services they employ to complete the application.

SBA anticipates that there will be some costs for SBA Supervised Lenders related to the new minimum capital requirement under the rule. This rule establishes a new minimum capital requirement for SBLCs and NFRLs of at least \$5 million and \$2.5 million, respectively. Based on information provided to SBA by SBA Supervised Lenders in quarterly condition reports, 11 of the 14 SBLCs (i.e., 79 percent) have at least \$3.7 million in capital (and of those 11 SBLCs, 11 have more than \$5 million in capital). In addition, 19 of the 22 NFRLs (i.e., 86 percent) have more than \$2.5 million in capital.

⁸ The cost estimate for a complete application is based on hourly job position wages published by the U.S. Department of Labor's Bureau of Labor Statistics for 2019 and increased by 100% to account for benefits and overhead. The cost breakdown is as follows: Financial Manager (30 hours times an hourly rate of \$124.90) plus Accountant (10 hours times an hourly rate of \$68.80) plus Attorney (5 hours times an hourly rate of \$118.22) plus Administrative Assistant (5 hours times an hourly rate of \$36.24) equals \$5,207.

SBA has determined that there are seven small entities that will be impacted by the new capital requirements in the rule. In other words, 7 of the 36 SBA Supervised Lenders that are considered small entities will need to increase their capital to reach the new minimum capital requirement of either \$2.5 million or \$5 million (as applicable). SBA estimates the amount of capital that would need to be raised by these small entities currently ranges between \$1,270,000 and \$3,580,000. SBA estimates that this rule may have a significant economic impact on 6 of the 36 SBA Supervised Lenders (i.e., 17 percent), each of which is considered a small entity. As noted above, all existing SBA Supervised Lenders will have 3 years from the effective date of a final rulemaking to comply with this part of the rule (other than for transactions involving a change of ownership or control of an SBA Supervised Lender).

SBA estimates that the cost of raising capital for SBA Supervised Lenders is approximately 9.8 percent of the amount of equity capital raised based on the Capital Asset Pricing Model (CAPM). The CAPM is one of the most widely used pricing models by financial professionals and considered the preferred method to estimate the cost of equity capital. See Duff & Phelps 2019 Valuation Handbook – U.S. Industry Cost of Capital (data through June 30, 2019).⁹ SBA estimates that the total cost of raising new equity capital for the seven SBA Supervised Lenders based on the requirements of the rule would range in amount from approximately \$124,000 to \$350,000.¹⁰ However, the cost is mitigated by the fact that under the rule SBA Supervised Lenders will have 3 years to increase their capital. Thus, the maximum amount that it would cost an existing SBA

⁹ The 2019 Valuation Handbook – U.S. Industry Cost of Capital published by Duff & Phelps provides cost of capital estimates for approximately 170 industries identified by Standard Industrial Classification codes (SIC). For purposes of estimating the cost of raising equity capital for SBA Supervised Lenders, SBA used SIC code 61 – non-depository credit institutions, which includes 21 companies that are engaged primarily in extending credit in the form of loans (but are not engaged in deposit banking). SBA compared the estimated cost of raising capital cited above with other sources and found the data to be similar.

¹⁰ The estimated cost to raise \$1.27 million or \$3.58 million in equity capital would be as follows: \$1,270,000 times 9.8% equals \$124,000; \$3.58 million times 9.8% equals \$350,000.

Supervised Lender to reach the new minimum capital requirement would be approximately \$117,000 per year for 3 consecutive years.¹¹

SBA determined that a 3-year time frame was a sufficient amount of time for SBA Supervised Lenders to increase their capital. SBA specifically requested comments on whether SBA Supervised Lenders should have 3 years to comply with the new minimum capital requirements under the proposed rule or should be required to comply sooner. The majority of the commenters were generally supportive of at least a 3-year time frame to meet the new minimum capital requirement.

The rule also limits the 7(a) lending area for NFRLs to the state in which their primary state regulator is located, except that with SBA approval it may include a local trade area that is contiguous to such state (such as a city or metropolitan statistical area bisected by a state line). There are currently 22 NFRLs participating in the 7(a) Loan Program. During the last 3 fiscal years, 2 NFRLs (each of which is considered a small entity) requested loan authorizations to make the majority of their 7(a) loans outside of the state in which their primary state regulator is located. Except for these two NFRLs, approximately 90 percent of the lending within the 7(a) Loan Program during the last 3 fiscal years was done in the state where the NFRL's primary state regulator is located. Approximately 79 percent of all 7(a) loan approvals obtained by NFRLs during the last 3 fiscal years were for loans to be made to small businesses located within their own state. This part of the rule will not impact a substantial number of small entities. It is important to note that this final rule will not impose any restrictions regarding an NFRL's non-7(a) lending activities. Therefore, the final rule will not have any impact on an NFRL's

¹¹ It should be noted that some existing SBA Supervised Lenders may decide to increase their capital by retaining earnings instead of raising new equity capital, which would reduce the cost of this rule.

ability to generate business by making other types of non-SBA loans outside of its own state.

Most commenters did not support the limitation on 7(a) lending areas for NFRLs. SBA considered the comments received and has agreed to allow existing NFRLs one additional year to adjust to this portion of the rule. Therefore, NFRLs currently engaged in 7(a) lending outside of the state in which their primary regulator is located may continue to make 7(a) loans on a nationwide basis (if permitted by their primary state-regulator) for 1 year from the effective date of this final rule. This additional one-year grace period will not apply to new applications from NFRLs, including those that have engaged in and/or are seeking approval of a change of ownership or control.

In summary, SBA estimates that the total cost to a particular SBA Supervised Lender associated with this rule (including the costs related to data collection) will range from zero to \$356,683, substantially all of which relates to the cost of raising capital and may be spread over a 3-year time period.

4. What are the relevant Federal rules which may duplicate, overlap, or conflict with the rule?

We are not aware of any Federal rules that duplicate, overlap or conflict with this rule. SBA's SOP 50 10 will have to be amended to conform to portions of this rule, which will be done separately.

5. What alternatives will allow the Agency to accomplish its regulatory objectives while minimizing the impact on small entities?

The Agency originally considered imposing the new minimum capital requirements for SBA Supervised Lenders immediately due to the risk associated with their lending operations. SBA recognized, however, that providing a 3-year period for SBA Supervised Lenders to increase their capital would be less burdensome on lenders

and their operational plans. SBA took into consideration that some lenders may need time to plan their capital raising efforts and negotiate favorable terms and conditions for increasing their capital. The 3-year time period will provide SBA Supervised Lenders with a sufficient amount of time to raise new equity capital and an opportunity to increase capital by retaining earnings (which will reduce the estimated overall cost of raising such capital).

SBA believes many of the changes in this rule will benefit small entities interested in becoming an SBA Supervised Lender by clarifying areas in the application process where there was confusion and to make the process more transparent. This rule will also allow SBA to evaluate the qualifications of new applicants (including for change of ownership or control transactions) more efficiently and make well-informed decisions on SBA Supervised Lender applications. SBA believes this rule encompasses best practice guidance that aligns with the Agency's mission to increase access to capital for small businesses and facilitate American job preservation and creation.

List of Subjects in 13 CFR Part 120

Community development, Equal employment opportunity, Loan programs—business, Reporting and recordkeeping requirements, Small businesses.

For the reasons stated in the preamble, SBA is amending 13 CFR part 120 as follows:

PART 120 - BUSINESS LOANS

1. The authority for 13 CFR part 120 continues to read as follows:

Authority: 15 U.S.C. 634(b) (6), (b) (7), (b) (14), (h), and note, 636(a), (h) and (m), and note, 650, 657t, and note, 657u, and note, 687(f), 696(3) and (7), and note, and 697(a) and (e), and note.

§ 120.410 [Amended]

2. Amend § 120.410 in paragraph (a)(1) by removing the phrase “for SBLCs, meeting its SBA minimum capital requirement; and for NFRLs, meeting its state minimum capital requirement); and”, and adding in its place the phrase, “and for SBLCs and NFRLs, meeting their respective minimum capital requirement); and”.

3. Amend § 120.460 by adding paragraphs (c) and (d) to read as follows:

§ 120.460 What are SBA’s additional requirements for SBA Supervised Lenders?

* * * * *

(c) An SBA Supervised Lender must have qualified full-time professional management including, but not limited to, a chief executive officer or the equivalent to manage daily operations, and a chief credit/risk officer. An SBA Supervised Lender must also have at least one other part-time professional employee (which may be a shared employee of the lender’s affiliates) qualified by training and experience to carry out its business plan. An SBA Supervised Lender is expected to sustain a sufficient level of lending activity in its lending area, which means obtaining at least four 7(a) loan approvals during two consecutive fiscal years. This paragraph only applies to SBA Supervised Lenders that make or acquire a 7(a) loan after January 4, 2021, or to any SBA Supervised Lender approved after such date, including in the event of a change of ownership or control of an SBA Supervised Lender.

(d) An NFRL may only make or acquire 7(a) loans in the state in which its primary state regulator is located, except that an NFRL’s lending area may include a local trade area that is contiguous to such state (e.g., a city or metropolitan statistical area that is bisected by a state line) if the NFRL receives SBA’s prior written approval. This paragraph applies to all NFRLs on or after January 4, 2021, including in the event of approval of a new NFRL or a change of ownership or control of an NFRL; provided

however, that if SBA has approved any NFRL to make 7(a) loans out of their state, then this paragraph will apply on or after January 4, 2022.

4. Amend § 120.462 by:

- a. Removing the phrase “by state regulators” wherever it appears and adding in its place the phrase “in § 120.462(a)(1)”;
- b. Redesignating paragraphs (a) through (e) as paragraphs (b) through (f); and
- c. Adding a new paragraph (a).

The addition reads as follows:

§ 120.462 What are SBA’s additional requirements on capital maintenance for SBA Supervised Lenders?

(a) *Minimum capital requirements--*(1) *For NFRLs.* (i) Beginning on January 4, 2024, each NFRL that makes or acquires a 7(a) loan must maintain the minimum capital required by its state regulator, or \$2,500,000, whichever is greater.

(ii) Any NFRL approved on or after January 4, 2021, including in the event of a change of ownership or control, must maintain the minimum capital requirement set forth in paragraph (a)(1)(i) of this section.

(iii) Unless subject to paragraph (a)(1)(i) or (ii) of this section, an NFRL must comply with the minimum capital requirements for NFRLs that were in effect on January 3, 2021.

(2) *For SBLCs.* For information on minimum capital requirements for SBLCs, see § 120.471.

* * * * *

5. Add § 120.466 to read as follows:

§ 120.466 SBA Supervised Lender application.

An entity seeking to participate as an SBA Supervised Lender must apply to SBA. SBA evaluates SBA Supervised Lender applicants through an initial review and final review, as follows:

(a) *Initial review.* SBA Supervised Lender applicants must submit a written plan containing information about the organization and its current and proposed lending activities (“Lender Assessment Plan”). After SBA’s review of the Lender Assessment Plan, the Office of Capital Access may require an interview with the applicant and its management team. SBA will determine, in its sole discretion, whether an applicant may proceed to the final review. If SBA determines that an applicant may not proceed to the final review, the applicant must wait at least 6 months before it may submit a new Lender Assessment Plan. Each applicant must demonstrate to SBA’s satisfaction that it meets the ethical requirements and the participation criteria set forth in 13 CFR 120.140 and 120.410. The Lender Assessment Plan must include the following items:

- (1) The legal name, address, telephone number and email address of the applicant;
- (2) Business plan, detailing the applicant’s proposed lending area and the volume of loan activity projected over the next 3 years (supported by current and projected balance sheets, income statements and statements of cash flows);
- (3) Capitalization (current and proposed), including the form of organization and the identification of all debt and classes of equity capital and proposed funding amounts, including any rights or preferences accorded to such interests (e.g., voting rights, redemption rights and rights of convertibility) and any conditions for the transfer, sale or assignment of such interests;
- (4) A list of all members of the applicant’s management team, including the applicant’s officers, directors, managers and key employees, as well as the applicant’s

owners, Associates (as defined in § 120.10) and Affiliates (as defined in § 121.103 of this chapter);

(5) A written summary of the professional experience (including any prior experience with any SBA program) of the applicant's management team (including key employees);

(6) In connection with any application to become an SBLC, the applicant must include a letter agreement signed by an authorized official of an existing SBLC certifying that the SBLC is seeking to transfer its SBA lending authority to the applicant; and

(7) If approval of any state or Federal chartering, licensing or other regulatory authority is required, copies of any licenses issued by or documents filed with such authority.

(b) *Final review.* Each applicant that receives notice from SBA in writing that it may proceed to the final review must submit a complete application to SBA within 90 calendar days. The application requirements for SBA Supervised Lenders are set forth in official SBA policy and procedures. An incomplete application submitted to SBA will not be processed and will be returned to the applicant. SBA may, in its sole discretion, approve or deny any SBA Supervised Lender application. The decision to approve or deny an SBA Supervised Lender application is a final agency decision. If an SBA Supervised Lender application is denied by SBA or if a complete application is not timely submitted, the applicant may not submit a new Lender Assessment Plan and restart the application process until 12 months from the date of denial or the date a complete application was due to SBA, as applicable.

(c) *NFRL operating and lending experience requirement.* For an entity seeking to become an NFRL, evidence of at least 1 year of current operating and relevant commercial lending experience by the entity must be provided.

6. Add § 120.467 to read as follows:

§ 120.467 Evaluation of SBA Supervised Lender applicants.

(a) SBA will evaluate an SBA Supervised Lender applicant based on information from, among other sources, the Lender Assessment Plan, an interview with the applicant's management team (if required), the application and any other documentation submitted by the applicant, the results of background investigations, public record searches and due diligence conducted by SBA or other Federal or state agencies. SBA's evaluation will consider factors such as the following:

(1) Professional qualifications of its management team (including key employees), including demonstrated commercial lending experience, business reputation, adherence to legal and ethical standards, track record in making and monitoring business loans, and prior history, if any, working as an officer, manager, director or key employee of a lender involved in any SBA program or any other Federal or state lending program.

(2) Historical performance measures of loans originated by the applicant or attributable to its management team (including key employees), including loan default rates, purchase rates and loss rates, measured in both percentage terms and in comparison to appropriate industry benchmarks, review/examination assessments and other performance measures.

(3) The applicant's capitalization, organizational structure, business plan (including any risk factors), projected financial performance, financial strength, liquidity, the soundness of its financial projections and underlying assumptions, loan underwriting process, operations plan and the history of compliance of the applicant and its management team (including key employees) with SBA Loan Program Requirements.

(4) Whether the NFRL's state regulator and the state statute or regulations governing the NFRL's operations, including but not limited to those pertaining to audit,

examination, supervision, enforcement and information sharing, are satisfactory to SBA in its sole discretion.

(5) For changes of ownership or control, in addition to the factors listed in paragraphs (a)(1) through (4) of this section, SBA will consider whether the applicant's plan for the resolution of any outstanding monetary liabilities to SBA, including repairs and denials and civil monetary penalties, is acceptable to SBA in its sole discretion.

(b) SBA may prohibit any individual or entity from participating as an officer, director, manager, owner or key employee of the applicant if such individual or entity:

(1) Has a previous record of failing to materially comply with SBA Loan Program Requirements;

(2) Previously participated in a material way with any past or present SBA Lender or Intermediary that failed to maintain satisfactory SBA performance;

(3) Previously defaulted on any Federal loan or Federally assisted financing that resulted in the Federal Government or any of its agencies or departments sustaining a loss in any of its programs; or

(4) Ever failed to pay when due any debt or obligation, including any amounts in dispute, to the Federal Government or guaranteed by the Federal Government (including but not limited to taxes or business or student loans).

7. Add § 120.468 to read as follows:

§ 120.468 Change of ownership or control requirements for SBA Supervised Lenders.

(a) *SBA prior approval required.* Any change of ownership or control of an SBA Supervised Lender without SBA's prior written approval is prohibited. Prior to entering into any agreement, other than a non-binding letter of intent, for a change of ownership or control, SBA Supervised Lenders must receive SBA's prior written approval from the

appropriate SBA official in accordance with the prevailing Delegations of Authority. An SBA Supervised Lender may not register proposed new owners on its books and records or permit them to participate in any manner in the conduct of the SBA Supervised Lender's affairs unless approved in writing by SBA. Any type of non-binding letter of intent regarding a prospective change of ownership or control must be reported to SBA within 30 calendar days. A change of ownership or control includes the following:

(1) Any transfer(s) (direct or indirect) of 10 percent or more of any class of the SBA Supervised Lender's stock or ownership interests (or series of transfers which, in the aggregate over an 18 month period, equals 10 percent or more), or any agreement providing for such transfer;

(2) Any transfer(s) (direct or indirect) that could result in the beneficial ownership by any person or group of persons acting in concert of 10 percent or more of any class of the SBA Supervised Lender's stock or ownership interests, or any agreement providing for such transfer(s);

(3) Any merger, consolidation, or reorganization;

(4) Any other transaction or agreement that transfers control of an SBA Supervised Lender; or

(5) Any other transaction or event that results in any change in the possession (direct or indirect) of the right to control, or the power to direct or cause the direction of, the management or policies of an SBA Supervised Lender, whether through the ownership of voting securities, by contract or otherwise.

(b) *Approval required by other regulatory authorities.* If a change of ownership or control of an SBA Supervised Lender is subject to the approval of any state or Federal chartering, licensing or other regulatory authority, copies of any documents filed with such authority must, at the same time, be transmitted to the appropriate SBA official in

accordance with the prevailing Delegations of Authority. The approval of any state or Federal authority will be required in addition to SBA's prior written approval.

(c) *Application requirements for changes of ownership or control.* An applicant must submit a Lender Assessment Plan and a new application in accordance with §120.466 for any change of ownership or control. If a proposed change of ownership is for less than 50 percent of the ownership interests in an SBA Supervised Lender, SBA may, in its sole discretion, limit the requirements of the Lender Assessment Plan or the complete application as set forth in official SBA policy and procedures.

(d) *Voluntary surrender of SBA lending authority.* An SBA Supervised Lender may voluntarily surrender its SBA lending authority (including its SBLC license or NFRL lending authority, as applicable) and withdraw as a participating Lender with SBA's prior written approval. The SBA Supervised Lender must agree to transfer its entire 7(a) loan portfolio to one or more Lenders acceptable to SBA in accordance with § 120.432(a), and enter into a withdrawal agreement to resolve any outstanding issues, including any outstanding monetary liabilities, to SBA's satisfaction. SBA may, in its sole discretion, take over the servicing of an SBA Supervised Lender's 7(a) loan portfolio in accordance with § 120.535(d) upon the voluntary surrender of its SBA lending authority.

§ 120.470 [Amended]

8. Amend § 120.470 by removing paragraph (g) and redesignating paragraph (h) as paragraph (g).

9. Amend § 120.471 by:

a. Revising paragraph (a);

b. Redesignating paragraphs (b)(3) through (5) as paragraphs (b)(4) through (6) respectively; and

c. Adding new paragraph (b)(3).

The revision and addition to read as follows:

§ 120.471 What are the minimum capital requirements for SBLCs?

(a) *Minimum capital requirements.* (1) Beginning on January 4, 2024, each SBLC that makes or acquires a 7(a) loan must maintain, at a minimum, unencumbered paid-in capital and paid-in surplus of at least \$5,000,000, or 10 percent of the aggregate of its share of all outstanding loans, whichever is greater.

(2) Any SBLC approved on or after January 4, 2021, including in the event of a change of ownership or control, must maintain the minimum capital requirement set forth in paragraph (a)(1) of this section.

(3) Unless subject to paragraph (a)(1) or (2) of this section, an SBLC must comply with the minimum capital requirements that were in effect on January 3, 2021.

(b) * * *

(3) Unrestricted net assets (for non-profit corporations);

* * * * *

§ 120.475 [Removed and Reserved]

10. Remove and reserve § 120.475.

Jovita Carranza,
Administrator.

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